

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ROMAN SEBASTIAN MONZON,

Plaintiff,

v.

Civil Action No. 3:23CV860

ROBIN Y. AUGCOMFAR,

Defendant.

MEMORANDUM OPINION

Plaintiff, a Virginia prisoner proceeding *pro se*, filed this civil action. Plaintiff requested leave to proceed *in forma pauperis*. By Memorandum Order entered on January 8, 2024, the Court directed Plaintiff to complete and return an *in forma pauperis* affidavit form and a consent to collection of fees form within thirty days of the date of entry thereof. Because Plaintiff failed to return either form, by Memorandum Opinion and Order entered on February 15, 2024, the Court dismissed the action. On February 20, 2024, the Court received a completed consent to collection of fees form and an *in forma pauperis* affidavit. (ECF Nos. 7, 8.)¹ On March 6, 2024, the Court received a Motion to Reinstate that the Court construed as a motion filed pursuant to Federal Rule of Civil Procedure 59(e). Plaintiff indicated that he submitted his forms to prison officials for mailing on January 19, 2024. (ECF No. 9, at 1.) Prison officials, however, waited until February 15, 2024, to bill him for postage and mail the forms. (*Id.*) It therefore appeared that Plaintiff placed his response in the prison mailing system on January 19, 2024, and the Court deemed his response to be timely. *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (deeming notice of appeal

¹ This letter was received in the Sussex Mailroom on February 16, 2024. (ECF No. 8-1, at 2.)

filed at time prisoner delivered it to the prison authorities for mailing). Accordingly, the Court granted the Rule 59(e) Motion and reopened the action. (ECF Nos. 10, 11.)

By Memorandum Order entered on April 19, 2024, the Court directed Plaintiff, within thirty (30) days, to submit an initial partial filing fee of \$0.83 or state under penalty of perjury that he did not have sufficient assets to pay such a fee. Plaintiff has neither paid the initial partial filing fee nor averred that he cannot pay such a fee. As a result, he does not qualify for *in forma pauperis* status. Furthermore, he has not paid the statutory filing fee for the instant action. *See* 28 U.S.C. § 1914(a). Plaintiff's conduct demonstrates a willful failure to prosecute. *See* Fed. R. Civ. P. 41(b).² Accordingly, this action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall accompany this Memorandum Opinion.

Date: 8 July 2024
Richmond, Virginia

/s/ 
John A. Gibney, Jr.
Senior United States District Judge

² The Court understands that Plaintiff has experienced problems with the mail. However, at this juncture, more than two months have elapsed, and Plaintiff has not responded to the April 19, 2024 Memorandum Order or, knowing that mail problems exist, contacted the Court to find out the status of his case.